

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE: 1/6/15

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

801 B



FROM: TLMA – Planning Department

SUBMITTAL DATE:
 December 17, 2014

SUBJECT: Approval of Agreement for Solar Power Plant Decommissioning and Site Reclamation and Bond Associated Therewith for the McCoy Solar Energy Project (CUP03682) - 4th District – [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

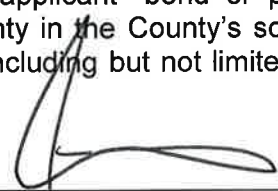
1. Approve the Agreement for Solar Power Plant Decommissioning and Site Reclamation Improvements and the associated Decommissioning and Site Reclamation Bond as approved by County Counsel.
2. Authorize the Chairman of the Board of Supervisors to sign the agreements and sign the acknowledgement and acceptance for the Decommissioning and Site Reclamation Bond.

BACKGROUND:

Summary

The McCoy Solar Energy Project (CUP03682) was approved by the Board of Supervisors on March 11, 2014, as Agenda Item 3-29. Condition of Approval 80 Planning 2 for CUP No. 3682 requires the approval of a Decommissioning and Site Reclamation Plan and that the applicant "bond or provide another appropriate and sufficient security in a form acceptable to the County in the County's sole discretion to cover the costs of all foreign material removal and site restoration including but not limited to removal of foundations, towers, transformers, inverters and cables."

Initials:
 JCP:lr


 Juan C. Perez
 TLMA Director/Interim Planning
 Director

| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost: | POLICY/CONSENT (per Exec. Office) |
|-----------------|----------------------|-------------------|-------------|---------------|---|
| COST | \$ N/A | \$ N/A | \$ N/A | \$ N/A | Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/> |
| NET COUNTY COST | \$ N/A | \$ N/A | \$ N/A | \$ N/A | |

SOURCE OF FUNDS: N/A
Budget Adjustment: N/A
For Fiscal Year: N/A

C.E.O. RECOMMENDATION:

APPROVE

BY: 
 Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 3/11/14 item 3-29 | District: 4/4 | Agenda Number:

3-20

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Decommissioning and Site Reclamation Bond for the McCoy Solar Energy Project
(CUP03682)**

DATE: UPDATE DATE

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

The applicant, McCoy Solar, LLC, has provided an engineering estimate of \$4,008,588.00 for such decommissioning, as set forth in the attached bond, Bond No. 09164746, which has been reviewed and approved by staff. The Agreement and Bond are necessary to ensure proper closure of the solar power plant after the life of its operation and in case of abandonment.

Impact on Citizens and Businesses

The impacts of this project have been evaluated through the environmental review and public hearing process by Planning staff, Planning Commission Hearing, and Board of Supervisors Hearing. Environmental Impact Report No. 528, previously certified by the Board of Supervisors in Resolution No. 2014-054 studied the overall project and its impacts.

SUPPLEMENTAL:

Additional Fiscal Information

N/A

Contract History and Price Reasonableness

N/A

ATTACHMENTS:

- A. Two copies of the Agreement for Solar Power Plant Decommissioning and Site Reclamation Improvements**
- B. Decommissioning and Site Reclamation Bond, Bond No. 09164746**

AGREEMENT
FOR SOLAR POWER PLANT
DECOMMISSIONING AND SITE RECLAMATION IMPROVEMENTS

This Agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and McCoy Solar, LLC, hereinafter called Developer.

WITNESSETH

FIRST: Developer, for and in consideration of the issuance of Conditional Use Permit No. 3682 for a solar power plant, agrees, at Developer's own cost and expense, to furnish all labor, equipment, and materials necessary to perform and complete, in a good and workmanlike manner, all decommissioning and site reclamation work and activities for the closure of the solar power plant (hereinafter collectively referred to as "Work"), in accordance with the Decommissioning and Site Reclamation Plan submitted in connection with Conditional Use Permit No. 3682 for the solar power plant, which has been approved by the Building Director, and is on file in the Office of the Riverside County Building and Safety Department, and to do all Work incidental thereto in accordance with the standards set forth in Riverside County Ordinance Nos. 348 and 457, as amended, which are expressly made a part of this Agreement. All of the above-required Work shall be done under the inspection of and to the satisfaction of the Building Director and shall not be deemed complete until final inspection of the site and approval by the Building Director.

The estimated cost of said Work is the sum of

Four Million Eight Thousand Five Hundred Eighty Eight and 00/100 dollars (\$ 4,008,588.00).

SECOND: Developer agrees to pay to the County the actual cost of such inspections of the Work as may be required by the Building Director. Developer further agrees that if suit is brought upon this Agreement or any bond or other security guaranteeing the completion of the Work, all costs and reasonable expenses and fees incurred by the County in successfully enforcing such obligations shall be paid by Developer, including reasonable attorney's fees, and that upon entry of judgment, such costs, expenses, and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the Work specified in this Agreement prior to the completion and approval hereof, nor shall County or any officer or employee thereof be liable for any persons or property injured by reason of the acts or omissions of Developer, his agents or employees in the performance of the Work, and all of said liabilities are assumed by Developer. Developer agrees to protect, defend and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Developer, and Developer's agents and employees, in the performance of this Agreement.

FOURTH: Developer hereby grants to the County, and to any agent or employee of the County, the irrevocable permission to enter upon the lands subject to the above referenced conditional use permit for the purpose of completing the Work. This permission shall terminate in the event that Developer has completed the Work within the time specified or any extension thereof granted by the Building Director.

FIFTH: Developer agrees at all times, up to the completion and approval of the Work by the Building Director, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the Work, and to protect the traveling public from such defective or dangerous conditions.

SIXTH: Developer, or Developer's agents and employees shall give notice to the Building Director at least 48 hours before beginning any Work and shall furnish said Building Director all reasonable facilities for obtaining full information respecting the progress and manner of Work.

SEVENTH: If Developer, or Developer's agents or employees, neglects, refuses, or fails to prosecute the Work with such diligence as to insure its completion within the specified time, or within such extensions of time as have been granted by the Building Director, or if the Developer violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Developer shall be in default of this Agreement and notice in writing of such default shall be served upon him. The Building Director shall have the power to terminate all rights of the Developer because of such default. The determination of the Building Director of the question as to whether any of the terms of this Agreement or the plans and specifications have been violated or have not been performed satisfactorily shall be conclusive upon the Developer, and any and all parties who may have any interest in the Agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all rights and remedies available to the County under law. The failure to commence the Work shall not relieve Developer or Surety of the obligation to complete the Work required by this Agreement.

EIGHTH: Developer agrees to file with County, prior to the date this Agreement is executed, a good and sufficient security in any amount not less than the estimated cost of the Work for the faithful performance of the terms and conditions of this Agreement, and Developer further agrees that if the security is a bond and, if the sureties on the faithful performance bond or the amount of said bonds in the opinion of the Building Director becomes insufficient, Developer agrees to renew each and every bond with good and sufficient sureties or increase the amount to the bonds, or both, within ten days, after being notified by the Building Director that the sureties or amounts are insufficient. Notwithstanding any other provision herein, if Developer fails to take such action as is necessary to comply with the notice, he shall be in default of this Agreement unless all required Work is completed within 90 days of the date on which the Building Director notified the Contractor of the insufficiency of the sureties or the amount of the bonds, or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or the issuers of any instruments or letters or credit securing this Agreement that, in the event it is deemed necessary to extend the time of completion of the Work contemplated to be done under this Agreement, extensions of time may be granted from time to time by the Building Director either at his own option or upon request of the Developer, and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties on said bonds. Developer further agrees to maintain the aforesaid bond or bonds or the issuance of any instruments or letters of credit in full force and effect during the terms of this Agreement, including any extensions of time as may be granted thereon.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be constructed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this Agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County

County of Riverside
Department of Building and Safety
P.O. Box 1440
Riverside, CA 92502-1440

Developer

McCoy Solar, LLC
700 Universe Blvd
Juno Beach, FL 33408

Phone No. # 561-762-5052
Fax No. # _____

IN WITNESS WHEREOF DEVELOPER HAS AFFIXED HIS NAME, ADDRESS AND SEAL.

Dated: _____



By Gregory Schneck
By Vice President
County of Riverside

By _____
For The Building Director

Approved as to Form:
Gregory P. Priamos, County Counsel

By: 

Date _____

(SIGNATURES OF DEVELOPER(S) MUST BE ACKNOWLEDGED BY A NOTARY AND EXECUTED IN DUPLICATE, WITH THE NOTARY ACKNOWLEDGMENT ATTACHED HERETO. ALL SIGNATURES TO BE INCLUDED ON THIS DOCUMENT OR IDENTIFY THIS DOCUMENT WHEN INCLUDING A SIGNATURE PAGE.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

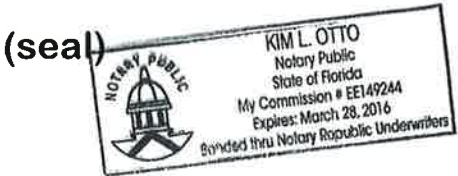
State of Florida

County of Palm Beach

On November 24, 2014 before me, Kim Otto, Notary Public, personally appeared Gregory Schneck, Vice President of McCoy Solar, LLC who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature 

DECOMMISSIONING and SITE RECLAMATION BOND

Bond No.: 09164746

KNOW ALL MEN BY THESE PRESENTS, THAT WE McCoy Solar, LLC (Hereinafter called Principal), as Principal and Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland (hereinafter called "Surety") as Surety, are held and firmly bound unto County of Riverside (Hereinafter called "Obligee"), as Obligee, in the penal sum of Four Million Eight Thousand Five Hundred Eighty Eight and 00/100 Dollars (\$4,008,588.00) good and lawful money of the United States of America, to be paid to the Obligee, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee has issued a Conditional Use Permit (CUP No. 3682) approving the McCoy Solar Energy Project (MSEP), which consists of the construction, operation and maintenance, and decommissioning of a solar energy generation facility and related infrastructure, and as a Condition of Approval of the CUP (80 Planning 2), the Principal has presented a Decommissioning and Site Reclamation Plan ("Plan"); and

WHEREAS, as a condition of said Plan, the Principal is required to provide security to cover the cost of decommissioning activities and site reclamation required by this Plan.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall comply with the conditions of the Plan as referenced above, then this obligation shall be void, otherwise to remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified above, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by County in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

PROVIDED, HOWEVER, THAT THIS BOND IS EXECUTED BY THE PRINCIPAL AND SURETY AND ACCEPTED BY THE OBLIGEE SUBJECT TO THE FOLLOWING EXPRESS CONDITIONS:

1. Notwithstanding the fact that the MSEP is anticipated to be in operation for 30 years beginning on October 30, 2014, it is understood by all parties to this bond that the term of this bond shall begin on October 30, 2014 and is continuous in nature until canceled as provided below.
2. The liability of the Surety shall not be discharged of any payment or succession of payments under this bond, unless and until such payment shall amount in the aggregate to the penal sum of the bond regardless of the number of extensions or years it may be in effect.
3. That in the case of default, the Obligee will give written notice to the surety within thirty (30) days thereafter.
4. No right of action shall accrue under this bond to or for the use or benefit of anyone other than the named Obligee or its successors or assigns. No assignment by the Principal shall be effective without the written consent of the Surety.
5. The surety may cancel this bond at least ninety (90) days prior to an anniversary date of this bond by giving the Obligee and Principal ninety (90) days written notice by certified mails of its desire to be relieved of liability. The ninety day period shall begin on the date when both the Obligee and

Principal receive the notice, as evidenced by the return receipts. It is understood that the Surety shall not be discharged of any liability already accrued prior to the effective date of cancellation.

6. If any conflict or inconsistency exists between the Surety's obligations as described in the Bond and as described in the underlying Plan, then the terms of the Bond shall prevail.

7. The Surety's liability under this bond shall not extend in any manner nor will the Surety be responsible to pay any sums due related to hazardous waste clean up, wetlands mitigation, remediation actions or removal or responsibility for any of these pollution risks whatsoever, unless such matters are a direct result of Principal's actions and required as a result of the conditions set forth in the Plan or for tort liability.

8. Neither nonrenewal or cancellation by the Surety, nor the failure or inability of the Principal to file replacement security in the event of nonrenewal or cancellation, shall constitute a loss or potential loss to the Oblige that is recoverable under this bond or any renewal or continuation thereof.

9. No modification of the Plan guaranteed by this bond shall be binding on the Surety or covered by this bond without the written consent of the Surety.


10. This bond shall not bind the surety unless the bond is accepted by the Oblige. The acknowledgment and acceptance of such bond is demonstrated by signing where indicated below. If this obligation is not accepted by way of signature of the Oblige below, this bond shall be deemed null and void. The persons who signatures appear below certify that they have the proper authority to bind their respective entities to all terms and conditions set forth in this bond.

IN WITNESS WHEREOF, said Principal and Surety have caused these presents to be executed in their names and by their seals to be hereunder affixed on this 17th day of October, 2014.

ATTEST 

ATTEST Bianca Phillips
Bianca Phillips, Witness

McCoy Solar, LLC
By  Gregory Schneck
Vice President
Principal

Fidelity and Deposit Company of Maryland
By 
Surety
Marina Tapia, Attorney-in-Fact

The above terms and conditions of this bond have been reviewed and accepted by _____, the Oblige.

Acknowledged and Accepted:

By: _____
Printed Name: _____
Title: _____
Date: _____

FORM APPROVED COUNTY COUNSEL
BY: 
TIFFANY N. NORTH
DATE: 10/17/14

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Florida

County of Palm Beach

On October 20, 2014 before me, Kim Otto, Notary Public, personally appeared Gregory Schneck, Vice President of McCoy Solar, LLC who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

Signature Kim Otto



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Pennsylvania

County of Philadelphia

On October 17, 2014 before me, Maureen McNeill, Notary Public, personally appeared Marina Tapia who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Pennsylvania that the foregoing paragraph is true and correct.

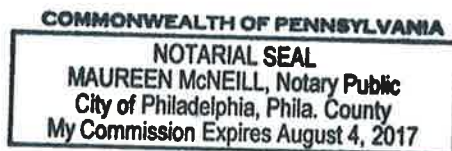
WITNESS my hand and official seal.

(seal)

Signature



Maureen McNeill, Notary Public



**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **THOMAS O. MCCLELLAN, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Douglas R. WHEELER, Maureen MCNEILL, Wayne G. MCVAUGH, Elizabeth MARRERO, Jaquanda LONG and Marina TAPIA, all of Philadelphia, Pennsylvania, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 18th day of August, A.D. 2014.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Eric D. Barnes*
Assistant Secretary
Eric D. Barnes

Thomas O. McClellan
Vice President
Thomas O. McClellan

State of Maryland
City of Baltimore

On this 18th day of August, A.D. 2014, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **THOMAS O. MCCLELLAN, Vice President, and ERIC D. BARNES, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, deposed and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Maria D. Adamski

Maria D. Adamski, Notary Public
My Commission Expires: July 8, 2015



FIDELITY AND DEPOSIT COMPANY

OF MARYLAND

600 Red Brook Blvd., Suite 600, Owings Mills, MD 21117

Statement of Financial Condition

As Of December 31, 2013

ASSETS

| | |
|--------------------------------------|-----------------------|
| Bonds..... | \$ 139,272,722 |
| Stocks | 22,258,887 |
| Cash and Short Term Investments..... | 6,595,113 |
| Reinsurance Recoverable | 17,970,134 |
| Other Accounts Receivable | 33,409,916 |
| TOTAL ADMITTED ASSETS..... | \$ 219,506,772 |

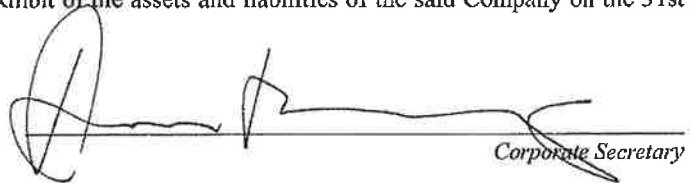
LIABILITIES, SURPLUS AND OTHER FUNDS

| | |
|--|-----------------------|
| Reserve for Taxes and Expenses | \$ 1,787,480 |
| Ceded Reinsurance Premiums Payable..... | 42,146,005 |
| Securities Lending Collateral Liability..... | 6,613,750 |
| TOTAL LIABILITIES | \$ 50,547,235 |
| Capital Stock, Paid Up..... | \$ 5,000,000 |
| Surplus..... | 163,959,537 |
| Surplus as regards Policyholders | 168,959,537 |
| TOTAL..... | \$ 219,506,772 |

Securities carried at \$58,378,690 in the above statement are deposited with various states as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of market quotations for all bonds and stocks owned, the Company's total admitted assets at December 31, 2013 would be \$223,222,696 and surplus as regards policyholders \$172,675,461.

I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2013.



 Corporate Secretary

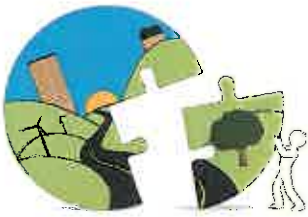
State of Illinois }
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2014.



 Notary Public





RIVERSIDE COUNTY PLANNING DEPARTMENT

Juan C. Perez
Interim Planning Director

DATE: January 8, 2015

TO: Clerk of the Board of Supervisors

FROM: Planning Department - Riverside Office

SUBJECT: McCoy Solar Power Plant Decommissioning Agreement and Bond

The attached item(s) require the following action(s) by the Board of Supervisors:

- | | |
|--|--|
| <input type="checkbox"/> Place on Administrative Action <small>(Receive & File; EOT)</small> | <input type="checkbox"/> Set for Hearing <small>(Legislative Action Required; CZ, GPA, SP, SPA)</small> |
| <input type="checkbox"/> Labels provided If Set For Hearing | <input type="checkbox"/> Publish in Newspaper: |
| <input type="checkbox"/> 10 Day <input type="checkbox"/> 20 Day <input type="checkbox"/> 30 day | **SELECT Advertisement** |
| <input type="checkbox"/> Place on Consent Calendar | <input type="checkbox"/> **SELECT CEQA Determination** |
| <input checked="" type="checkbox"/> Place on Policy Calendar <small>(Resolutions; Ordinances; PNC)</small> | <input type="checkbox"/> 10 Day <input type="checkbox"/> 20 Day <input type="checkbox"/> 30 day |
| <input type="checkbox"/> Place on Section Initiation Proceeding <small>(GPIP)</small> | <input type="checkbox"/> Notify Property Owners <small>(app/agencies/property owner labels provided)</small> |
| | Controversial: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |

Riverside Office · 4080 Lemon Street, 12th Floor
P.O. Box 1409, Riverside, California 92502-1409
(951) 955-3200 · Fax (951) 955-1811

Desert Office · 77-588 Duna Court, Suite H
Palm Desert, California 92211
(760) 863-8277 · Fax (760) 863-7040

"Planning Our Future... Preserving Our Past"

FORM APPROVED COUNTY COUNSEL
 BY: GREGORY P. PRIAMOS DATE: 1/6/15

**SUBMITTAL TO THE BOARD OF SUPERVISORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: TLMA – Planning Department

SUBMITTAL DATE:
 December 17, 2014

SUBJECT: Approval of Agreement for Solar Power Plant Decommissioning and Site Reclamation and Bond Associated Therewith for the McCoy Solar Energy Project (CUP03682) - 4th District – [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Agreement for Solar Power Plant Decommissioning and Site Reclamation Improvements and the associated Decommissioning and Site Reclamation Bond as approved by County Counsel.
2. Authorize the Chairman of the Board of Supervisors to sign the agreements and sign the acknowledgement and acceptance for the Decommissioning and Site Reclamation Bond.

BACKGROUND:

Summary

The McCoy Solar Energy Project (CUP03682) was approved by the Board of Supervisors on March 11, 2014, as Agenda Item 3-29. Condition of Approval 80 Planning 2 for CUP No. 3682 requires the approval of a Decommissioning and Site Reclamation Plan and that the applicant "bond or provide another appropriate and sufficient security in a form acceptable to the County in the County's sole discretion to cover the costs of all foreign material removal and site restoration including but not limited to removal of foundations, towers, transformers, inverters and cables."

Juan C. Perez
 TLMA Director/Interim Planning
 Director

Initials:
 JCP:lr

| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost: | POLICY/CONSENT (per Exec. Office) |
|-----------------------------|----------------------|-------------------|-------------|-------------------------------|---|
| COST | \$ N/A | \$ N/A | \$ N/A | \$ N/A | Consent <input type="checkbox"/> Policy <input checked="" type="checkbox"/> |
| NET COUNTY COST | \$ N/A | \$ N/A | \$ N/A | \$ N/A | |
| SOURCE OF FUNDS: N/A | | | | Budget Adjustment: N/A | |
| | | | | For Fiscal Year: N/A | |

C.E.O. RECOMMENDATION:

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

- A-30
- Positions Added
- 4/5 Vote
- Change Order

Prev. Agn. Ref.: 3/11/14 item 3-29 | **District:** 4/4 | **Agenda Number:**

Departmental Concurrence

**SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Decommissioning and Site Reclamation Bond for the McCoy Solar Energy Project
(CUP03682)**

DATE: UPDATE DATE

PAGE: 2 of 2

BACKGROUND:

Summary (continued)

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Impact on Citizens and Businesses

The impacts of this project have been evaluated through the environmental review and public hearing process by Planning staff, Planning Commission Hearing, and Board of Supervisors Hearing. Environmental Impact Report No. 528, previously certified by the Board of Supervisors in Resolution No. 2014-054 studied the overall project and its impacts.

SUPPLEMENTAL:

Additional Fiscal Information

N/A

Contract History and Price Reasonableness

N/A

ATTACHMENTS:

- A. Two copies of the Agreement for Solar Power Plant Decommissioning and Site Reclamation Improvements**
- B. Decommissioning and Site Reclamation Bond, Bond No. 09164746**

AGREEMENT

**FOR SOLAR POWER PLANT
DECOMMISSIONING AND SITE RECLAMATION IMPROVEMENTS**

This Agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and McCoy Solar, LLC, hereinafter called Developer.

WITNESSETH

FIRST: Developer, for and in consideration of the issuance of Conditional Use Permit No. 3682 for a solar power plant, agrees, at Developer's own cost and expense, to furnish all labor, equipment, and materials necessary to perform and complete, in a good and workmanlike manner, all decommissioning and site reclamation work and activities for the closure of the solar power plant (hereinafter collectively referred to as "Work"), in accordance with the Decommissioning and Site Reclamation Plan submitted in connection with Conditional Use Permit No. 3682 for the solar power plant, which has been approved by the Building Director, and is on file in the Office of the Riverside County Building and Safety Department, and to do all Work incidental thereto in accordance with the standards set forth in Riverside County Ordinance Nos. 348 and 457, as amended, which are expressly made a part of this Agreement. All of the above-required Work shall be done under the inspection of and to the satisfaction of the Building Director and shall not be deemed complete until final inspection of the site and approval by the Building Director.

The estimated cost of said Work is the sum of

Four Million Eight Thousand Five Hundred Eighty Eight and 00/100 dollars (\$ 4,008,588.00).

SECOND: Developer agrees to pay to the County the actual cost of such inspections of the Work as may be required by the Building Director. Developer further agrees that if suit is brought upon this Agreement or any bond or other security guaranteeing the completion of the Work, all costs and reasonable expenses and fees incurred by the County in successfully enforcing such obligations shall be paid by Developer, including reasonable attorney's fees, and that upon entry of judgment, such costs, expenses, and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the Work specified in this Agreement prior to the completion and approval hereof, nor shall County or any officer or employee thereof be liable for any persons or property injured by reason of the acts or omissions of Developer, his agents or employees in the performance of the Work, and all of said liabilities are assumed by Developer. Developer agrees to protect, defend and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Developer, and Developer's agents and employees, in the performance of this Agreement.

FOURTH: Developer hereby grants to the County, and to any agent or employee of the County, the irrevocable permission to enter upon the lands subject to the above referenced conditional use permit for the purpose of completing the Work. This permission shall terminate in the event that Developer has completed the Work within the time specified or any extension thereof granted by the Building Director.

FIFTH: Developer agrees at all times, up to the completion and approval of the Work by the Building Director, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the Work, and to protect the traveling public from such defective or dangerous conditions.

SIXTH: Developer, or Developer's agents and employees shall give notice to the Building Director at least 48 hours before beginning any Work and shall furnish said Building Director all reasonable facilities for obtaining full information respecting the progress and manner of Work.

SEVENTH: If Developer, or Developer's agents or employees, neglects, refuses, or fails to prosecute the Work with such diligence as to insure its completion within the specified time, or within such extensions of time as have been granted by the Building Director, or if the Developer violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Developer shall be in default of this Agreement and notice in writing of such default shall be served upon him. The Building Director shall have the power to terminate all rights of the Developer because of such default. The determination of the Building Director of the question as to whether any of the terms of this Agreement or the plans and specifications have been violated or have not been performed satisfactorily shall be conclusive upon the Developer, and any and all parties who may have any interest in the Agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all rights and remedies available to the County under law. The failure to commence the Work shall not relieve Developer or Surety of the obligation to complete the Work required by this Agreement.

EIGHTH: Developer agrees to file with County, prior to the date this Agreement is executed, a good and sufficient security in any amount not less than the estimated cost of the Work for the faithful performance of the terms and conditions of this Agreement, and Developer further agrees that if the security is a bond and, if the sureties on the faithful performance bond or the amount of said bonds in the opinion of the Building Director becomes insufficient, Developer agrees to renew each and every bond with good and sufficient sureties or increase the amount to the bonds, or both, within ten days, after being notified by the Building Director that the sureties or amounts are insufficient. Notwithstanding any other provision herein, if Developer fails to take such action as is necessary to comply with the notice, he shall be in default of this Agreement unless all required Work is completed within 90 days of the date on which the Building Director notified the Contractor of the insufficiency of the sureties or the amount of the bonds, or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or the issuers of any instruments or letters of credit securing this Agreement that, in the event it is deemed necessary to extend the time of completion of the Work contemplated to be done under this Agreement, extensions of time may be granted from time to time by the Building Director either at his own option or upon request of the Developer, and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties on said bonds. Developer further agrees to maintain the aforesaid bond or bonds or the issuance of any instruments or letters of credit in full force and effect during the terms of this Agreement, including any extensions of time as may be granted thereon.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be constructed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this Agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

County

County of Riverside
Department of Building and Safety
P.O. Box 1440
Riverside, CA 92502-1440

Developer

McCoy Solar, LLC

700 Universe Blvd

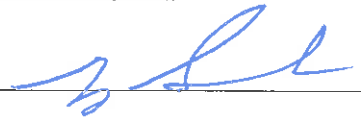
Juno Beach, FL 33408

Phone No. # 561-762-5052

Fax No. # _____

IN WITNESS WHEREOF DEVELOPER HAS AFFIXED HIS NAME, ADDRESS AND SEAL.

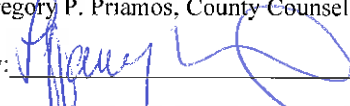
Dated: _____



By _____
Gregory Schneck
By _____
Vice President
County of Riverside

By _____
For The Building Director

Approved as to Form:
Gregory P. Priamos, County Counsel

By: 

Date _____

(SIGNATURES OF DEVELOPER(S) MUST BE ACKNOWLEDGED BY A NOTARY AND EXECUTED IN DUPLICATE, WITH THE NOTARY ACKNOWLEDGMENT ATTACHED HERETO. ALL SIGNATURES TO BE INCLUDED ON THIS DOCUMENT OR IDENTIFY THIS DOCUMENT WHEN INCLUDING A SIGNATURE PAGE.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

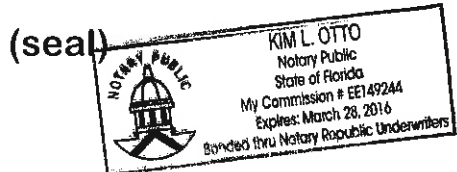
State of Florida

County of Palm Beach

On November 24, 2014 before me, Kim Otto, Notary Public, personally appeared Gregory Schneck, Vice President of McCoy Solar, LLC who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Kim Otto

AGREEMENT
FOR SOLAR POWER PLANT
DECOMMISSIONING AND SITE RECLAMATION IMPROVEMENTS

This Agreement, made and entered into by and between the County of Riverside, State of California, hereinafter called County, and McCoy Solar, LLC, hereinafter called Developer.

WITNESSETH

FIRST: Developer, for and in consideration of the issuance of Conditional Use Permit No. 3682 for a solar power plant, agrees, at Developer's own cost and expense, to furnish all labor, equipment, and materials necessary to perform and complete, in a good and workmanlike manner, all decommissioning and site reclamation work and activities for the closure of the solar power plant (hereinafter collectively referred to as "Work"), in accordance with the Decommissioning and Site Reclamation Plan submitted in connection with Conditional Use Permit No. 3682 for the solar power plant, which has been approved by the Building Director, and is on file in the Office of the Riverside County Building and Safety Department, and to do all Work incidental thereto in accordance with the standards set forth in Riverside County Ordinance Nos. 348 and 457, as amended, which are expressly made a part of this Agreement. All of the above-required Work shall be done under the inspection of and to the satisfaction of the Building Director and shall not be deemed complete until final inspection of the site and approval by the Building Director.

The estimated cost of said Work is the sum of

Four Million Eight Thousand Five Hundred Eighty Eight and 00/100 dollars (\$ 4,008,588.00).

SECOND: Developer agrees to pay to the County the actual cost of such inspections of the Work as may be required by the Building Director. Developer further agrees that if suit is brought upon this Agreement or any bond or other security guaranteeing the completion of the Work, all costs and reasonable expenses and fees incurred by the County in successfully enforcing such obligations shall be paid by Developer, including reasonable attorney's fees, and that upon entry of judgment, such costs, expenses, and fees shall be taxed as costs and included in any judgment rendered.

THIRD: County shall not, nor shall any officer or employee of County, be liable or responsible for any accident, loss or damage happening or occurring to the Work specified in this Agreement prior to the completion and approval hereof, nor shall County or any officer or employee thereof be liable for any persons or property injured by reason of the acts or omissions of Developer, his agents or employees in the performance of the Work, and all of said liabilities are assumed by Developer. Developer agrees to protect, defend and hold harmless County and the officers and employees thereof from all loss, liability or claim because of, or arising out of the acts or omissions of Developer, and Developer's agents and employees, in the performance of this Agreement.

FOURTH: Developer hereby grants to the County, and to any agent or employee of the County, the irrevocable permission to enter upon the lands subject to the above referenced conditional use permit for the purpose of completing the Work. This permission shall terminate in the event that Developer has completed the Work within the time specified or any extension thereof granted by the Building Director.

FIFTH: Developer agrees at all times, up to the completion and approval of the Work by the Building Director, to give good and adequate warning to the traveling public of each and every dangerous condition caused by the Work, and to protect the traveling public from such defective or dangerous conditions.

SIXTH: Developer, or Developer's agents and employees shall give notice to the Building Director at least 48 hours before beginning any Work and shall furnish said Building Director all reasonable facilities for obtaining full information respecting the progress and manner of Work.

SEVENTH: If Developer, or Developer's agents or employees, neglects, refuses, or fails to prosecute the Work with such diligence as to insure its completion within the specified time, or within such extensions of time as have been granted by the Building Director, or if the Developer violates, neglects, refuses, or fails to perform satisfactorily any of the provisions of the plans and specifications, Developer shall be in default of this Agreement and notice in writing of such default shall be served upon him. The Building Director shall have the power to terminate all rights of the Developer because of such default. The determination of the Building Director of the question as to whether any of the terms of this Agreement or the plans and specifications have been violated or have not been performed satisfactorily shall be conclusive upon the Developer, and any and all parties who may have any interest in the Agreement or any portion thereof. The foregoing provisions of this section shall be in addition to all rights and remedies available to the County under law. The failure to commence the Work shall not relieve Developer or Surety of the obligation to complete the Work required by this Agreement.

EIGHTH: Developer agrees to file with County, prior to the date this Agreement is executed, a good and sufficient security in any amount not less than the estimated cost of the Work for the faithful performance of the terms and conditions of this Agreement, and Developer further agrees that if the security is a bond and, if the sureties on the faithful performance bond or the amount of said bonds in the opinion of the Building Director becomes insufficient, Developer agrees to renew each and every bond with good and sufficient sureties or increase the amount to the bonds, or both, within ten days, after being notified by the Building Director that the sureties or amounts are insufficient. Notwithstanding any other provision herein, if Developer fails to take such action as is necessary to comply with the notice, he shall be in default of this Agreement unless all required Work is completed within 90 days of the date on which the Building Director notified the Contractor of the insufficiency of the sureties or the amount of the bonds, or both.

NINTH: It is further agreed by and between the parties hereto, including the surety or sureties on the bonds or the issuers of any instruments or letters of credit securing this Agreement that, in the event it is deemed necessary to extend the time of completion of the Work contemplated to be done under this Agreement, extensions of time may be granted from time to time by the Building Director either at his own option or upon request of the Developer, and such extensions shall in no way affect the validity of this Agreement or release the surety or sureties on said bonds. Developer further agrees to maintain the aforesaid bond or bonds or the issuance of any instruments or letters of credit in full force and effect during the terms of this Agreement, including any extensions of time as may be granted thereon.

TENTH: It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be constructed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

ELEVENTH: Any notice or notices required or permitted to be given pursuant to this Agreement shall be served on the other party by mail, postage prepaid, at the following addresses:

| | |
|-----------------------------------|--------------------------|
| <u>County</u> | <u>Developer</u> |
| County of Riverside | _____ |
| Department of Building and Safety | _____ |
| P.O. Box 1440 | _____ |
| Riverside, CA 92502-1440 | _____ |
| | _____ |
| | Phone No. # 561-762-5052 |
| | Fax No. # _____ |

IN WITNESS WHEREOF DEVELOPER HAS AFFIXED HIS NAME, ADDRESS AND SEAL.

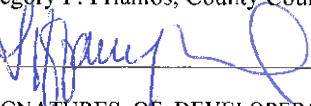
Dated: _____

By  _____
Gregory Schneck
Vice President

By _____
County of Riverside

By _____
For The Building Director

Approved as to Form:
Gregory P. Priamos, County Counsel

By  _____

Date _____

(SIGNATURES OF DEVELOPER(S) MUST BE ACKNOWLEDGED BY A NOTARY AND EXECUTED IN DUPLICATE, WITH THE NOTARY ACKNOWLEDGMENT ATTACHED HERETO. ALL SIGNATURES TO BE INCLUDED ON THIS DOCUMENT OR IDENTIFY THIS DOCUMENT WHEN INCLUDING A SIGNATURE PAGE.)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Florida

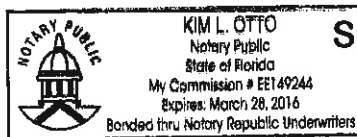
County of Palm Beach

On November 24, 2014 before me, Kim Otto, Notary Public, personally appeared Gregory Schneck, Vice President of McCoy Solar, LLC who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)



Signature

[Handwritten Signature]

DECOMMISSIONING and SITE RECLAMATION BOND

Bond No.: 09164746

KNOW ALL MEN BY THESE PRESENTS, THAT WE McCoy Solar, LLC (Hereinafter called Principal), as Principal and Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland (hereinafter called "Surety") as Surety, are held and firmly bound unto County of Riverside (Hereinafter called "Obligee"), as Obligee, in the penal sum of Four Million Eight Thousand Five Hundred Eighty Eight and 00/100 Dollars (\$4,008,588.00) good and lawful money of the United States of America, to be paid to the Obligee, for the payment of which, well and truly to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Obligee has issued a Conditional Use Permit (CUP No. 3682) approving the McCoy Solar Energy Project (MSEP), which consists of the construction, operation and maintenance, and decommissioning of a solar energy generation facility and related infrastructure, and as a Condition of Approval of the CUP (80 Planning 2), the Principal has presented a Decommissioning and Site Reclamation Plan ("Plan"); and

WHEREAS, as a condition of said Plan, the Principal is required to provide security to cover the cost of decommissioning activities and site reclamation required by this Plan.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall comply with the conditions of the Plan as referenced above, then this obligation shall be void, otherwise to remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified above, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by County in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

PROVIDED, HOWEVER, THAT THIS BOND IS EXECUTED BY THE PRINCIPAL AND SURETY AND ACCEPTED BY THE OBLIGEE SUBJECT TO THE FOLLOWING EXPRESS CONDITIONS:

1. Notwithstanding the fact that the MSEP is anticipated to be in operation for 30 years beginning on October 30, 2014, it is understood by all parties to this bond that the term of this bond shall begin on October 30, 2014 and is continuous in nature until canceled as provided below.
2. The liability of the Surety shall not be discharged of any payment or succession of payments under this bond, unless and until such payment shall amount in the aggregate to the penal sum of the bond regardless of the number of extensions or years it may be in effect.
3. That in the case of default, the Obligee will give written notice to the surety within thirty (30) days thereafter.
4. No right of action shall accrue under this bond to or for the use or benefit of anyone other than the named Obligee or its successors or assigns. No assignment by the Principal shall be effective without the written consent of the Surety.
5. The surety may cancel this bond at least ninety (90) days prior to an anniversary date of this bond by giving the Obligee and Principal ninety (90) days written notice by certified mails of its desire to be relieved of liability. The ninety day period shall begin on the date when both the Obligee and

Principal receive the notice, as evidenced by the return receipts. It is understood that the Surety shall not be discharged of any liability already accrued prior to the effective date of cancellation.

6. If any conflict or inconsistency exists between the Surety's obligations as described in the Bond and as described in the underlying Plan, then the terms of the Bond shall prevail.

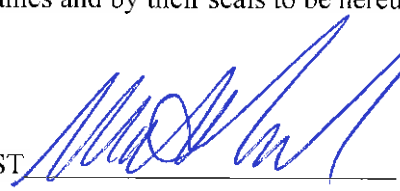
7. The Surety's liability under this bond shall not extend in any manner nor will the Surety be responsible to pay any sums due related to hazardous waste clean up, wetlands mitigation, remediation actions or removal or responsibility for any of these pollution risks whatsoever, unless such matters are a direct result of Principal's actions and required as a result of the conditions set forth in the Plan or for tort liability.

8. Neither nonrenewal or cancellation by the Surety, nor the failure or inability of the Principal to file replacement security in the event of nonrenewal or cancellation, shall constitute a loss or potential loss to the Oblige that is recoverable under this bond or any renewal or continuation thereof.

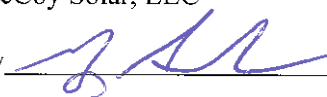
9. No modification of the Plan guaranteed by this bond shall be binding on the Surety or covered by this bond without the written consent of the Surety.

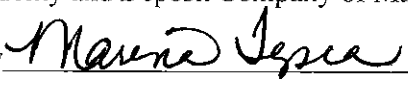
10. This bond shall not bind the surety unless the bond is accepted by the Oblige. The acknowledgment and acceptance of such bond is demonstrated by signing where indicated below. If this obligation is not accepted by way of signature of the Oblige below, this bond shall be deemed null and void. The persons who signatures appear below certify that they have the proper authority to bind their respective entities to all terms and conditions set forth in this bond.

IN WITNESS WHEREOF, said Principal and Surety have caused these presents to be executed in their names and by their seals to be hereunder affixed on this 17th day of October, 2014.

ATTEST 

ATTEST Bianca Phillips
Bianca Phillips, Witness

McCoy Solar, LLC
By  **Gregory Schneck**
Vice-President
Principal

Fidelity and Deposit Company of Maryland
By 
Surety
Marina Tapia, Attorney-in-Fact

FORM APPROVED COUNTY COUNSEL
BY: 
DATE: 10/17/14

The above terms and conditions of this bond have been reviewed and accepted by _____, the Oblige.

Acknowledged and Accepted:

By: _____

Printed Name: _____

Title: _____

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Florida

County of Palm Beach

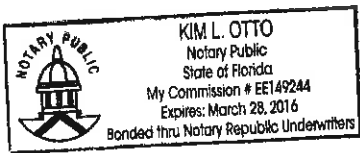
On October 20, 2014 before me, Kim Otto, Notary Public, personally appeared Gregory Schneck, Vice President of McCoy Solar, LLC who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

Signature Kim Otto



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of Pennsylvania

County of Philadelphia

On October 17, 2014 before me, Maureen McNeill, Notary Public, personally appeared Marina Tapia who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Pennsylvania that the foregoing paragraph is true and correct.

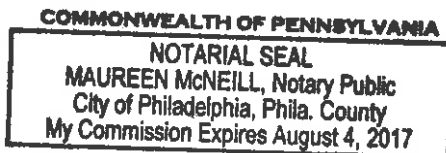
WITNESS my hand and official seal.

(seal)

Signature

Maureen McNeill

Maureen McNeill, Notary Public



**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Maryland, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Maryland (herein collectively called the "Companies"), by **THOMAS O. MCCLELLAN, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Douglas R. WHEELER, Maureen MCNEILL, Wayne G. MCVAUGH, Elizabeth MARRERO, Jaquanda LONG and Marina TAPIA, all of Philadelphia, Pennsylvania, EACH** its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 18th day of August, A.D. 2014.

ATTEST:

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Eric D. Barnes*
Assistant Secretary
Eric D. Barnes

Thomas O. McClellan
Vice President
Thomas O. McClellan

State of Maryland
City of Baltimore

On this 18th day of August, A.D. 2014, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **THOMAS O. MCCLELLAN, Vice President, and ERIC D. BARNES, Assistant Secretary**, of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Maria D. Adamski

Maria D. Adamski, Notary Public
My Commission Expires: July 8, 2015



EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 17th day of OCTOBER, 20 14.



A handwritten signature in black ink, appearing to read "Michael Bond".

Michael Bond, Vice President

FIDELITY AND DEPOSIT COMPANY

OF MARYLAND

600 Red Brook Blvd., Suite 600, Owings Mills, MD 21117

Statement of Financial Condition

As Of December 31, 2013

ASSETS

| | |
|--------------------------------------|-----------------------|
| Bonds..... | \$ 139,272,722 |
| Stocks..... | 22,258,887 |
| Cash and Short Term Investments..... | 6,595,113 |
| Reinsurance Recoverable..... | 17,970,134 |
| Other Accounts Receivable..... | 33,409,916 |
| TOTAL ADMITTED ASSETS..... | \$ 219,506,772 |

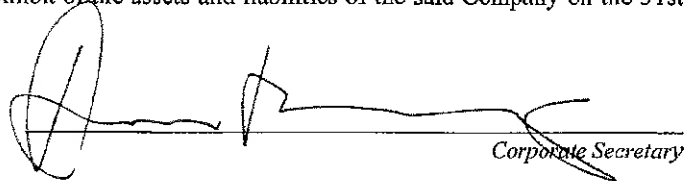
LIABILITIES, SURPLUS AND OTHER FUNDS

| | |
|--|-----------------------|
| Reserve for Taxes and Expenses..... | \$ 1,787,480 |
| Ceded Reinsurance Premiums Payable..... | 42,146,005 |
| Securities Lending Collateral Liability..... | 6,613,750 |
| TOTAL LIABILITIES..... | \$ 50,547,235 |
| Capital Stock, Paid Up..... | \$ 5,000,000 |
| Surplus..... | 163,959,537 |
| Surplus as regards Policyholders..... | 168,959,537 |
| TOTAL..... | \$ 219,506,772 |

Securities carried at \$58,378,690 in the above statement are deposited with various states as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of market quotations for all bonds and stocks owned, the Company's total admitted assets at December 31, 2013 would be \$223,222,696 and surplus as regards policyholders \$172,675,461.

I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2013.



 Corporate Secretary

State of Illinois }
 City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 15th day of March, 2014.



 Notary Public

